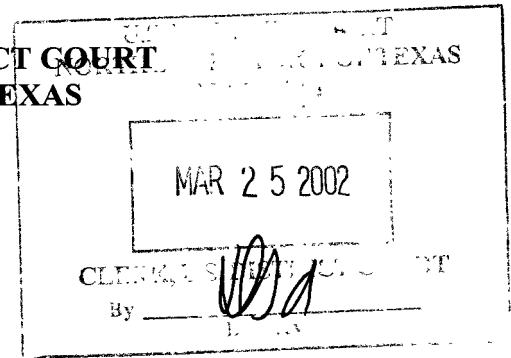


ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS



Gerald K. Smith, as Plan Trustee for  
and on behalf of the Estates of Boston  
Chicken, Inc.; BC Real Estate Investments,  
Inc. and all Boston Chicken Affiliates

Plaintiff,

vs.

CASE NO. CV-01-218 PHX PGR

Arthur Anderson LLP, a limited liability  
partnership; Scott A. Beck, an individual,  
and the marital community of Scott A. Beck,  
and his spouse; Saad J. Nadhir, an  
individual, and the marital community of  
Saad J. Nadhir, and his spouse; Mark W.  
Stephens, an individual, and the marital  
community of Mark W. Stephens, and  
his spouse; Merrill Lynch & Co., a  
corporation; Merrill Lynch, Pierce, Fenner  
& Smith, Inc., a corporation; Deutsche  
Banc Securities, Inc., a corporation, d/b/a  
Deutsche Banc Alex. Brown; and Morgan  
Stanley & Co. Incorporated, a corporation;

Defendants.

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**GODWIN GRUBER, P.C.'S OBJECTIONS TO SUBPOENA DUCES TECUM  
AND MOTION TO QUASH SUBPOENA DUCES TECUM AND BRIEF IN SUPPORT**

COMES NOW Godwin Gruber, P.C. ("Godwin Gruber") and files this its Objections to Subpoena Duces Tecum and Motion to Quash Subpoena Duces Tecum and Brief in Support, and would respectfully show the Court as follows:

**I.**

1.1 On March 11, 2002, a subpoena duces tecum (“subpoena”) was served upon Godwin Gruber along with a cover letter. A true and correct copy of the subpoena and cover letter is attached hereto as **Exhibit “A”** and is incorporated herein by reference.

1.2 The subpoena requires compliance by March 26, 2002 at 8:30 a.m.

**II.**

**OBJECTIONS**

2.1 Godwin Gruber makes the following objections to the subpoena:

1. Godwin Gruber objects to the entire subpoena as over broad, unduly burdensome, and harassing. The cumulative effect of complying with items 1-11 on Exhibit “A” to the subpoena would be to produce virtually every piece of paper in a three year lawsuit.
2. Godwin Gruber objects to item 1 on Exhibit “A” to the subpoena in that it seeks production of attorney-client communications and work product information. Specifically, the request for “all documents relating, referring to or supporting the Petition and Amended Findings of Fact and Conclusions of Law” would encompass virtually every attorney-client communication and piece of work product in the entire litigation, encompassing hundreds and perhaps thousands of documents.
3. Godwin Gruber objects to the time period set forth in complying with the subpoena. Most, if not all, of these documents have been put into storage years ago. It would take Godwin Gruber at least thirty (30) days to go

through all of these documents and pull out responsive, non-privileged documents to comply with the subpoena.

### III.

#### MOTION TO QUASH

3.1 Godwin Gruber also files a Motion to Quash on the following grounds:

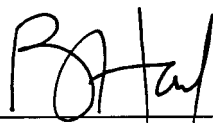
1. The cumulative effect of complying with items 1-11 on Exhibit "A" to the subpoena would be to produce virtually every piece of paper in a three year lawsuit.
2. The request for "all documents relating, referring to or supporting the Petition and Amended Findings of Fact and Conclusions of Law" would encompass virtually every attorney-client communication and piece of work product in the entire litigation, encompassing hundreds and perhaps thousands of documents.
3. Most, if not all, of these documents have been put into storage years ago. It would take Godwin Gruber at least thirty (30) days to go through all of these documents and pull out responsive, non-privileged documents to comply with the subpoena *Duces Tecum*.
4. Godwin Gruber further move to quash the Subpoena *Duces Tecum* pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iii), to the extent the Subpoena *Duces Tecum* would require disclosure of privileged or other protected matters. Specifically items 1 and 8 to Exhibit "A" to the subpoena would violate confidentiality agreed to between the parties in the *Howell* litigation. To be

clear, Mr. Howell and the other Plaintiffs in the *Howell* litigation are willing to waive any confidentiality concerns relating to that litigation. However, it is Godwin Gruber's understanding that Mr. Beck and/or some of the other Defendants in the *Howell* litigation do not wish to waive any confidentiality concerns. This issue should be a matter which is decided between the parties in the underlying litigation.

**WHEREFORE, PREMISES CONSIDERED**, Godwin Gruber, P.C. respectfully urges the foregoing objections and request relief on the Motion to Quash as set forth herein, and be granted such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

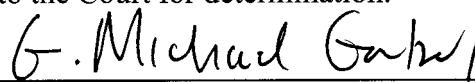
**GODWIN GRUBER, P.C.**

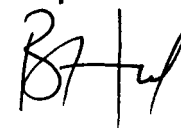
By:   
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**ATTORNEYS FOR GODWIN GRUBER, P.C.**

**CERTIFICATE OF CONFERENCE**

G. Michael Gruber personally conferred with Richard H. Goldberg, who is opposed to the relief sought herein. Therefore, it is presented to the Court for determination.

  
G. Michael Gruber



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 25th day of March, 2002 a true and correct copy of the foregoing was served as indicated to counsel of record listed below:

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